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Judge Narrows CBS Trial Focus

Testimony on Johnson's Awareness of Troop Strength Ruled Out

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NEW YORK, Oct. 12—A federal judge said today that the key issue in retired Army General William C. Westmoreland's \$120 million libel suit against CBS Inc. will be whether the general misled his superiors, including President Lyndon B. Johnson, about enemy troop strength at a crucial period in the Vietnam war.

U.S. District Court Judge Pierre Leval, in trying to narrow the focus of this complicated legal conflict over a 1982 CBS documentary, warned lawyers for both sides that they were dealing with a libel case—not refighting the war in Southeast Asia.

And he said he will not allow testimony on whether President Johnson was aware of enemy troop strength in Vietnam in the crucial period before the Tet offensive in January 1968.

"We're not trying President Johnson here on how good his sources of information were," Leval said.

Leval's refining of the issue, according to CBS attorneys, could take away some of the impact Monday when Westmoreland's first witness is scheduled to appear on his behalf—Walt W. Rostow, who was

President Johnson's special assistant and a member of the National Security Council.

Rostow was expected to tell the jury that President Johnson was well aware of an enemy buildup in South Vietnam and was not surprised by the Tet offensive, as CBS indicated in its January 1982 broadcast, "The Uncounted Enemy: A Vietnam Deception."

Now Rostow will be allowed to testify only on whether Westmoreland did or did not tell the president about increasing enemy strength in South Vietnam.

The CBS program, which Westmoreland called a "preposterous hoax," accused the former head of the Military Assistance Command, Vietnam (MACV) and other military leaders in Vietnam of a "con-

spiracy" to hide enemy troop strength from the public, Congress and the president in 1967.

CBS argued in its broadcast that the surprising size of the Tet offensive marked the end of public support for the Vietnam war because the massive uprising came at a time when Westmoreland was seeing "some light at the end of the tunnel," as the general said in one cable.

Westmoreland's attorney has ar-

gued that the broadcast was "a powerful work of fiction" that made a conspiracy out of an internal "debate" between the CIA and the Army about whether certain guerrilla troops should be included in enemy troop strength assessments.

In this fourth day of a trial that is expected to last for several months, CBS lawyer David Boies tried to answer some of the main accusations by Westmoreland's attorney—including one charge that the general was "rattlesnaked" two years ago when narrator Mike Wallace interviewed him.

Westmoreland lawyer Dan M. Burt said Thursday that the general was so shaken during the interview that he made a "mistake" in estimating the number of North Vietnamese soldiers infiltrating South Vietnam before Tet at 20,000 per month. After the interview, Burt said Westmoreland sent a letter to Wallace saying he was "right" when he said on NBC's "Meet the Press" in 1967 that the infiltration rate was closer to 5,500 a month.

But Burt said CBS producer George Crile did not use the letter in the show, telling Wallace that there was "nothing new" in it.

Boies argued that Wallace gave Westmoreland four opportunities to

answer the question on infiltration during the interview.

Boies told the court that Wallace confronted the general at one point about a conflicting statement made on "Meet the Press" in 1967 when the general had given a lower infiltration figure of 5,500 to 6,000 a month.

Boies also argued that Westmoreland briefed himself in advance about details on the war from records available at the Center for Military History in Washington.

Boies added that when Westmoreland wrote the letter to Wallace he may have been trying to "take back the consequences" of his statement about the higher infiltration level.

Boies, who showed the jury huge blowups of quotations from cables and interviews like those used to support the documentary, closed his argument on behalf of CBS with a quote from the resignation letter of Samuel Adams, a former CIA analyst who is also a defendant in the trial.

Adams, who presented his letter of resignation on January 31, 1968, on the second day of the Tet offensive, called the suppression of figures by Westmoreland's command a "monument of deceit" by the government. Adams, who was a paid consultant for the CBS documentary, said in the letter that he felt that the CIA's failure to win the fight to release higher troop estimates meant that it had acquiesced to the Army's "half-truths, distortions and sometimes outright falsehoods."